

FINANCIAL SECTOR REFORM (SOUTH AUSTRALIA) BILL

The Hon. K.T. GRIFFIN (Attorney-General) obtained leave and introduced a Bill for an Act to facilitate the transfer to the Commonwealth of responsibility for regulating building societies, credit unions and friendly societies as companies under the Corporations Law; to repeal the Financial Institutions (Application of Laws) Act 1992 and the Friendly Societies (South Australia) Act 1997; to amend the South Australian Office of Financial Supervision Act 1992 and provide for the winding up of SAOFS and the expiry of the Act; to amend the Acts Interpretation Act 1915 and certain other Acts; to provide for transitional matters; and for other purposes. Read a first time.

The Hon. K.T. GRIFFIN: I move:

That this Bill be now read a second time.

I seek leave to have the second reading explanation inserted in *Hansard* without my reading it.

Leave granted.

The *Financial Sector Reform (South Australia) Bill* provides the necessary legislative framework to facilitate a transfer of the responsibility for the corporate and prudential regulation of building societies, credit unions, special service providers and friendly societies from the State and Territory based Financial Institutions Scheme to a national framework overseen by the Australian

Securities and Investments Commission and the new Commonwealth prudential Regulator, the Australian Prudential Regulation Authority (APRA).

The *Financial Sector Reform (South Australia) Bill* is the first, and most important, of a package of two Bills which make up the South Australian legislation necessary to ensure that the reform of the Australian financial system can proceed. The *Financial Sector (Transfer of Business) Bill 1999* is the second of these Bills.

The *Financial Sector Reform (South Australia) Bill* is based on model legislation to be passed by all State and Territory Parliaments by a target "transfer date" of 1 July 1999 and complements legislation introduced into Federal Parliament which is also expected to be passed by the target transfer date.

In 1997 the Commonwealth Government's report into the Australian financial system, the Wallis Report, recommended changes to the regulation of the Australian financial system to establish a more efficient, competitive and flexible financial system, better equipped to deal with change, especially the continued globalisation of financial markets, and rapid advances in technology.

Most significantly, the Wallis Report recommended that all financial institutions, including banks, non-bank financial institutions and friendly societies, be subject to the same regulatory regime, and that the responsibility for regulating this new regime be transferred to a single Commonwealth regulator.

In line with these recommendations, the Commonwealth and all State and Territory Governments agreed as a matter of policy that:

- the corporate and prudential regulation of non-bank deposit taking institutions and friendly societies under the Financial Institutions Scheme would cease;
- all deposit taking institutions and friendly societies would become registered as companies under the *Corporations Law* and that corporate regulation of these entities would become the responsibility of the Australian Securities and Investment Commission (ASIC), formerly the ASC;
- deposit taking institutions would be licensed and prudentially regulated at a federal level under the *Banking Act 1959*, and the "financial" activities of friendly societies (the selling of financial products through benefit funds) would be licensed and prudentially regulated under the *Life Insurance Act 1995*;
- prudential regulation of all deposit taking institutions and the financial activities of friendly societies would become the responsibility of the new federal prudential regulator, the Australian Prudential Regulation Authority (APRA) established under Commonwealth legislation in 1998;
- the transfer of regulatory responsibility would, if possible, occur on 1 July 1999.

The Commonwealth is in the process of passing legislation to achieve the steps detailed above. However, complementary State and Territory legislation is also necessary to complete the transfer. Consequently, the States and Territories have developed model legislation to be introduced in all jurisdictions. The *Financial Sector Reform (South Australia) Bill 1999* is based on this model legislation.

Part 1 of the Bill repeals the *Financial Institutions (Application of Laws) Act 1992* and the *Friendly Societies (South Australia) Act 1997*. This has the effect of cancelling the registration and regulation of building societies, credit unions, special service providers and friendly societies under the Financial Institutions and Friendly Societies Codes.

Part 2 of the Bill confers on ASIC and APRA the power to regulate building societies, credit unions, special service providers and "financial" friendly societies for the purposes of the transition from regulation under the Financial Institution Scheme to the new regime.

Part 3 deals with the winding up of the Australian Financial Institutions Commission (AFIC) a body established under Queensland legislation to coordinate the prudential and corporate regulation of building societies, credit unions, special service providers and friendly societies. Clauses 10, 11 and 14 provide for the transfer of AFIC staff, assets and liabilities to ASIC and APRA, the details of which are to be contained in a transfer agreement entered into between the Commonwealth and the State of Queensland. Clause 15 preserves civil legal proceedings involving AFIC which were commenced prior to the transfer date, with the State of Queensland substituted for AFIC as a party. Clause 16 empowers ASIC and APRA to continue proceedings brought by AFIC for breaches of the AFIC Code.

Part 4 of the Bill provides partly for the winding up of the South Australian Office of Financial Supervision (SAOFS). Clauses 18 and 19 deal with the transfer of SAOFS staff to APRA, the details of

which are to be contained in a transfer agreement entered into between the Commonwealth and the Government of South Australia. Clauses 21 and 22 provide for the winding up of the supervision and credit union contingency funds administered by SAOFS. Civil legal proceedings involving SAOFS which were commenced prior to the transfer date are preserved by clause 23, which substitutes the State of South Australia for SAOFS as a party. Clause 24 empowers ASIC and APRA to continue proceedings brought by SAOFS for breaches of the Financial Institutions and Friendly Societies Codes.

Clauses 26 to 29 of Part 5 preserve certain provisions of the repealed AFIC, Financial Institutions and Friendly Societies Codes, including provisions empowering AFIC and SAOFS to enforce and to investigate suspected breaches of the Codes. The powers previously exercised by AFIC and SAOFS in this regard are provided to ASIC and APRA. Clause 29 also preserves certain provisions of the Friendly Society Code relating to the restructure and termination of friendly society benefit funds.

Parts 6 and 7 deal with various miscellaneous matters necessary to complete the transfer. The most significant of these are clause 31 which provides that money in dormant accounts is to be transferred back into the account of customers, and clause 32 which is necessary to convert withdrawable shares held by members of the State's building society to deposits prior to the institution transferring to the *Corporations Law*. This will ensure adequate protection is given to these institutional members under the *Corporations Law*. Clauses 34 and 35 ensure that mergers and transfers of engagements commenced under the Financial Institutions or Friendly Societies Code before, but not completed by, the transfer date can be completed under the supervision of ASIC and APRA. Finally, clause 36 deems that all applications made to the defunct Australian Financial Institutions Appeal Tribunal against decisions of either AFIC or SAOFS that have not been decided prior to the transfer date are taken to have been withdrawn. The Government is advised that the only such appeal was withdrawn voluntarily some time ago.

An exemption from State taxes, duties and charges is provided in respect of the transfer agreements transferring assets from AFIC or SAOFS to APRA or ASIC.

The financial sector reforms, and in particular the legislation enacted by the Commonwealth, has necessitated certain consequential amendments to a number of South Australian Acts. These consequential amendments are contained in the Schedule to the Bill. Most of these consequential amendments relate to the conversion of banks, building societies and credit unions into one type of deposit taking institution, 'authorised deposit taking institution'. This reflects amendments to the Commonwealth's *Banking Act*.

Also included in the schedule are provisions completing the winding up of SAOFS, so that the powers of SAOFS are limited to those necessary to effect winding up. The schedule provides that any surplus assets are to be paid back to industry and that once the winding up process is completed, SAOFS must prepare a winding up report. This report must include accounts audited by the Auditor-General. The *South Australian Office of Financial Supervision Act 1992* is then to expire on a date fixed by proclamation.

South Australians have been fortunate to have been served by a strong regional financial sector, based on the growth of non-bank financial institutions. This has complemented the services provided by the traditional banking sector, promoting greater consumer choice of financial institutions and products. There can be no doubt that prudential supervision of this sector under the Financial Institutions Scheme has been successful. Since the scheme's inception, no South Australian has lost money deposited with a South Australian scheme institution. The framework provided by the scheme has also promoted the growth of the non-bank financial sector in this State. There are now 14 credit unions, one building society and four financial friendly societies in South Australia. This State now boasts the largest credit union in the country.

Despite these successes, the Government supports the Commonwealth in its efforts to further reform the regulation of the Australian financial system to make it more competitive and better able to withstand international pressures. The Wallis Report identified the move to a single prudential regulatory regime as the best way to ensure that this occurs. South Australians should also benefit. Our institutions will have access to a truly national financial market which will enhance competition. Consumers will have access to a greater selection of financial service providers and products.

The State's financial institutions and friendly societies have expressed strong support for implementation of the reforms at the earliest possible time. The Commonwealth Government has identi-

fied 1 July 1999 as the most appropriate transfer date. This date is supported by the State and Territory Governments, all of whom are working towards passage of their legislation by 30 June despite the tight time frame.

The Government therefore calls upon all members to ensure passage of this Bill by the 30 June deadline.

I commend this Bill to the Council.

Explanation of Clauses

PART 1

PRELIMINARY

Clause 1: Short title

This clause is formal.

Clause 2: Commencement

This clause provides for commencement of certain provisions on assent and certain provisions on the transfer date.

The legislation is complementary to amendments to the *Corporations Law* providing for building societies, credit unions and friendly societies to become companies under that Law on the transfer date. Once complementary legislation has been enacted in each jurisdiction, the transfer date will be specified by the Commonwealth under section 3(16) of the *Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999* of the Commonwealth.

A provision of this measure is to come into operation on the transfer date except where preparatory action is required under the provision, in which case, the provision is to come into operation on assent.

Clause 3: Repeals

The *Financial Institutions (Application of Laws) Act 1992* and the *Friendly Societies (South Australia) Act 1997* are repealed.

Clause 4: Interpretation

This clause contains relevant definitions.

PART 2

CONFERRAL OF FUNCTIONS AND POWERS ON APRA AND ASIC

Clause 5: Conferral of functions and powers on APRA

This clause formally confers functions and powers on the Australian Prudential Regulation Authority (APRA) for the purposes of the measure.

Clause 6: Conferral of functions and powers on ASIC

This clause formally confers functions and powers on the Australian Securities and Investments Commission (ASIC) for the purposes of the measure.

PART 3

PROVISIONS RELATING TO AFIC

DIVISION 1—AFIC TO CONTINUE

Clause 7: Continuation of AFIC for certain purposes

This clause provides that despite the repeal of the relevant legislation the Australian Financial Institutions Commission (AFIC) is to continue for purposes connected with winding up its affairs. AFIC was established under Queensland legislation but the AFIC Code (applied as a law of South Australia) governs appointments to the AFIC board, appointment of staff etc.

Clause 8: Delegation of AFIC's powers

This clause enables the AFIC board to delegate powers to an appropriately qualified employee during the winding up period.

DIVISION 2—PROVISIONS ABOUT AFIC'S STAFF

Clause 9: Interpretation

This clause includes the executive director of AFIC within the term employee for the purposes of the Division.

Clause 10: Transfer of staff to APRA under transfer agreement

The Queensland Minister administering the corresponding legislation in that State is authorised to enter into a transfer agreement under Commonwealth legislation providing for the transfer of AFIC staff to APRA. AFIC staff may also be transferred to ASIC but this is to be achieved through the *Commonwealth Public Service Act*.

Clause 11: Effect of transfer under section or of employees of AFIC becoming appointed to the Australian Public Service

This clause ensures that, on transfer of a person's employment from AFIC to APRA or ASIC, the person's employment with AFIC ends without giving rise to any entitlements for payment for termination of employment.

Clause 12: Statement of accrued benefits etc.

This clause requires AFIC to provide a statement of accrued benefits, remuneration and length of service for each transferring employee.

DIVISION 3—INFORMATION MAY BE GIVEN TO APRA OR ASIC

Clause 13: Giving of information

This clause ensures that information obtained by AFIC may be passed on to ASIC and APRA.

DIVISION 4—TRANSFER OF AFIC'S ASSETS AND LIABILITIES

Clause 14: Transfer of assets and liabilities

The Queensland Minister administering the corresponding legislation in that State is authorised to enter into a transfer agreement under Commonwealth legislation providing for the transfer of AFIC assets and liabilities to APRA or ASIC.

DIVISION 5—PROCEEDINGS INVOLVING AFIC

Clause 15: Continuation and preservation of certain civil proceedings involving AFIC

This clause provides that, from the transfer date, the State of Queensland is to take the place of AFIC in relation to civil proceedings.

Clause 16: Continuation of certain offence proceedings

This clause enables APRA or ASIC to continue to prosecute offences in place of AFIC where a prosecution has been commenced before the transfer date.

PART 4

PROVISIONS RELATING TO SAOFS

DIVISION 1—TRANSFER OF SAOFS' ASSETS AND LIABILITIES

Clause 17: Transfer of assets and liabilities

The State Minister is authorised to enter into a transfer agreement under Commonwealth legislation providing for the transfer of SAOFS assets and liabilities to APRA or ASIC.

DIVISION 2—PROVISIONS ABOUT SAOFS' STAFF

Clause 18: Transfer of staff to APRA under transfer agreement

The State Minister is authorised to enter into a transfer agreement under Commonwealth legislation providing for the transfer of SAOFS staff to APRA. SAOFS staff may also be transferred to ASIC but this is to be achieved through the *Commonwealth Public Service Act*.

Clause 19: Effect of transfer to APRA or APS

This clause ensures that, on transfer of a person's employment from SAOFS to APRA or ASIC, the person's employment with SAOFS ends without giving rise to any entitlements for payment for termination of employment.

Clause 20: Statement of accrued benefits etc.

This clause requires SAOFS to provide a statement of accrued benefits, remuneration and length of service for each transferring employee.

DIVISION 3—WINDING UP OF FUNDS

Clause 21: Supervision Fund

The Supervision Fund is established under the *Financial Institutions Code*. Building societies, credit unions and friendly societies pay levies into the fund and the expenses of SAOFS are paid out of the fund.

This clause provides for the use of the Supervision Fund during the winding up period. It authorises payments out to APRA and ASIC in respect of transferred liabilities. It also authorises the winding up and other expenses of SAOFS to be paid out of the Fund.

Any surplus in the Fund is to be distributed amongst building societies, credit unions and friendly societies in proportions considered by the Minister to be fair.

Clause 22: Credit Unions Contingency Fund

This clause provides for the winding up of the Credit Unions Contingency Fund and the return of funds to contributing credit unions. This will include distribution of certain funds to Northern Territory credit unions that have contributed to the fund under an agreement entered into under the *Financial Institutions Code*.

DIVISION 4—PROCEEDINGS INVOLVING SAOFS

Clause 23: Continuation and preservation of civil proceedings involving SAOFS

This clause provides that, from the transfer date, the State is to take the place of SAOFS in relation to civil proceedings.

Clause 24: Continuation of certain offence proceedings

This clause enables APRA or ASIC to continue to prosecute offences in place of SAOFS where a prosecution has been commenced before the transfer date.

DIVISION 5—INFORMATION MAY BE GIVEN BY SAOFS

Clause 25: Giving of information

This clause ensures that information obtained by SAOFS may be passed on to ASIC, APRA or the Minister.

PART 5

ENFORCEMENT BY APRA AND ASIC OF REPEALED CODES

Clause 26: Conferral of enforcement powers on APRA and ASIC

Enforcement powers of AFIC and SAOFS relating to building societies, credit unions and friendly societies are passed on to APRA and ASIC.

Clause 27: AFIC Code provisions

Clause 28: Financial Institutions Code provisions

Clause 29: Friendly Societies Code provisions

Modifications are made to the general enforcement powers contained in the relevant codes for the purposes of enforcement by APRA or ASIC.

Clause 30: Conferral of functions and powers

This clause formally confers functions and powers on APRA and ASIC for the purposes of this Part.

PART 6

OTHER TRANSITIONAL PROVISIONS

Clause 31: Dormant accounts

Under this clause dormant accounts are reinstated as deposit accounts. On the transferring financial institution becoming a company under the *Corporations Law* the matter of unclaimed money will be able to be dealt with under the general law.

Clause 32: Withdrawable shares in building societies

In South Australia there is one building society with withdrawable shares. Under this clause on the transfer date the withdrawable shares will be converted into deposits and the shares cancelled. The clause makes it clear that the holder of the deposit remains a member of the building society.

Clause 33: Matters in relation to deregistered financial bodies and societies

This clause ensures that ASIC may act in relation to deregistered financial bodies and societies in place of SAOFS.

Clause 34: Mergers and transfers of engagements commenced under Financial Institutions (South Australia) Code

Clause 35: Mergers and transfers of engagements commenced under Friendly Societies (South Australia) Code

These clauses allow mergers and transfers to be completed despite the repeal of the codes.

Clause 36: Australian Financial Institutions Appeals Tribunal
The Tribunal was established under Queensland legislation. It will cease to exist on the transfer date by reason of the repeal of that legislation.

This clause brings proceedings before the Tribunal at the transfer date to an immediate end. Orders that the Tribunal could have made would be irrelevant under the new scheme.

PART 7

MISCELLANEOUS

Clause 37: Registration or record of transfer

This clause facilitates registration in this State of transfers of assets from AFIC or SAOFS to APRA or ASIC.

Clause 38: Exemption from State taxes

This clause exempts all transfers of assets from AFIC or SAOFS to APRA or ASIC under the measure from State duties and taxes.

Clause 39: Relationship of Act with other laws

This clause ensures that the transfers of assets and liabilities from AFIC and SAOFS to APRA and ASIC may occur without resulting in a breach of contract etc.

Clause 40: Regulations

A general regulation making power is provided.

SCHEDULE

Related Amendments

The Schedule contains amendments to various Acts resulting from—

- transferring financial institutions becoming companies under the *Corporations Law*; and
- the regulation of transferring building societies and credit unions as authorised deposit-taking institutions under the *Banking Act* of the Commonwealth; and
- the regulation of transferring financial friendly societies under the *Life Insurance Act* of the Commonwealth.

The opportunity has also been taken to tidy up some out of date references.

The *Acts Interpretation Act* is amended to insert definitions of ADI, bank, building society, credit union and friendly society for reference throughout the Statute book. ADI is a broad expression that encompasses banks, building societies and credit unions. The expressions bank holiday and bank (or banker's) cheque are retained despite their wider application to ADIs.

The *South Australian Office of Financial Supervision Act* is amended to provide for the winding up of SAOFS and the expiry of the Act by proclamation once the winding up has been completed. Under the amendments, SAOFS' reporting obligations for the

1998/1999 financial year are extended to cover the period up to the transfer date. SAOFS is also required to prepare reports for the winding up period (a period after the transfer date). SAOFS' assets not covered by a transfer agreement are to be disposed of and any proceeds paid into the Supervision Fund for distribution to building societies, credit unions and friendly societies. Provisions are also included for the finalisation of the Register of financial interests of SAOFS members and staff kept under section 33 of the Act and the delivery of that Register to the Minister.

The Hon. P. HOLLOWAY secured the adjournment of the debate.

FINANCIAL SECTOR (TRANSFER OF BUSINESS) BILL

The Hon. K.T. GRIFFIN (Attorney-General) obtained leave and introduced a Bill for an Act to provide for the transfers of business between authorised deposit-taking institutions and between life insurance companies; and for other purposes. Read a first time.

The Hon. K.T. GRIFFIN: I move:

That this Bill be now read a second time.

I seek leave to have the second reading explanation inserted in *Hansard* without my reading it.

Leave granted.

This Bill completes the package of legislation necessary to ensure the transfer of regulatory responsibility for non-bank financial institutions and financial friendly societies to the Commonwealth.

The Financial Institutions (South Australia) Code and Friendly Societies (South Australia) Code contain provisions which enabled building societies, credit unions and friendly societies to transfer, or merge their financial businesses between themselves with the approval of the relevant regulator. The transfers or mergers permitted were either voluntary, or directed for prudential purposes. These provisions are to be repealed on transfer date.

No equivalent scheme is available under the present Commonwealth regime. The State and Territory regulated entities, such as the building societies, credit unions and friendly societies, along with the Commonwealth, State, and Territories, were keen to ensure that these groups were not disadvantaged by the transfer. The Commonwealth is of the view that some of these provisions were useful prudential regulation tools.

Consequently, Commonwealth, State and Territory Governments have agreed to establish a modified transfer of business regime. This scheme is set out in the Commonwealth's *Financial Sector (Transfer of Business) Bill 1999* and will apply to all deposit taking institutions and life insurance companies, treating all such entities equally.

Due to Constitutional limitations, complementary legislation is required in all States and Territories to ensure that assets and liabilities which are subject to the business being transferred pass legally from the transferring institution to the receiving institution. Hence all jurisdictions are required to pass legislation which gives effect to transfers of business conducted under the Commonwealth's Bill.

The *Financial Sector (Transfer of Business) Bill 1999* is based on model legislation developed by the States and Territories in consultation with the Commonwealth. It establishes a complementary framework to allow the transfer of financial business between deposit taking institutions and friendly societies regulated by APRA under the *Commonwealth Life Insurance Act*, where necessary for prudential purposes (compulsory transfers) or where approved by APRA (voluntary transfers), to proceed under the Commonwealth legislation. Clause 4 (voluntary transfers) and clause 5 (compulsory transfers) contain the necessary provisions to ensure transfers of business under the Commonwealth legislation are effective in respect of any assets and liabilities held by either South Australian institutions, or interstate institutions with assets or liabilities located in South Australia.

Clause 7 of the Bill requires relevant State authorities, such as the Registrar General to register or record transactions affecting assets or liabilities, or documents relating to such transactions and, on application accompanied by a certificate issued by APRA, register or record the transfer or transfers on production of the appropriate certificate issued by APRA. Clause 8 of the Bill provides an exemption from State taxes and duties in respect of transfers under the